

LAW OFFICES

COHN AND MARKS

STANLEY S. NEUSTADT
STANLEY B. COHEN
RICHARD M. SCHMIDT, JR.
JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
IAN D. VOLNER
LAWRENCE N. COHN
RICHARD A. HELMICK
BRIAN M. MADDEN
WAYNE COY, JR.

N. FRANK WIGGINS
MARK L. PELESH
J. BRIAN DE BOICE
ALLAN ROBERT ADLER

SUSAN V. SACHS
APRIL MCCLAIN-DELANEY
JOHN R. PRZYPYSZNY
MELINDA K. SKINNER
MICHELLE M. SHANAHAN*

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS

*MEMBER PENNSYLVANIA BAR ONLY

SUITE 600
1333 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036-1573

TELEPHONE (202) 293-3860
CABLE COMAR-WASHINGTON, D. C.
TELECOPIER (202) 293-4827

DIRECT DIAL: (202) 452-4836

June 29, 1992

RECEIVED

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, DC 20540

ORIGINAL
FILE

JUN 29 1992

Federal Communications Commission
Office of the Secretary

Re: Comments in PR Docket No. 92-80
RM-7909

Dear Ms. Searcy

Transmitted herewith, on behalf of the National ITFS Association, are the original and five (5) copies of its Comments in the above-captioned matter.

Should you have any questions with respect to the above matter, please contact the undersigned.

Very truly yours,

Wayne Coy Jr.

Enclosures

No. of Copies rec'd
List A B C D E

0+5

RECEIVED

JUN 29 1992

BEFORE THE

Federal Communications Commission
Office of the Secretary

Federal Communications Commission

In the Matter of)
)
Amendment of Parts 1, 2, and) PR Docket No. 92-80
21 of the Commission's Rules) RM 7909
Governing the Use of Frequencies)
in the 2.1 and 2.5 GHZ Bands)

COMMENTS

In response to the NOTICE OF PROPOSED RULE MAKING adopted April 9 and released May 8, 1992, the National ITFS Association ("NIA") offers its Comments generally supporting the Commission's effort to reduce delays associated with the processing of MDS and MMDS applications with some reservations and some suggestions, as follows:

BACKGROUND

1. NIA is a national association of more than 60 educators located in 26 states and the District of Columbia who are using Instructional Television Fixed Service (ITFS) frequencies to provide educational services to students enrolled in for-credit courses in elementary, secondary, college, post-graduate and career training. They include public, private and parochial schools, community and junior colleges, public and private universities, regional media centers, public broadcasters, state agencies and non-profit corporations (a 1992 membership list is available).

2. The purpose of the organization is to promote the effective use of the ITFS spectrum for its intended educational use and to encourage and assist potential user institutions to develop local or regional instructional networks using ITFS. In addition, the association, through a quarterly newsletter, keeps its members informed as to regulatory and judicial decisions affecting the industry, and presents articles of interest to educators generally involved in "distance learning." As an example, because local ITFS facilities can provide "the final mile" for the delivery of satellite-fed instructional materials, NIA is working with the American Association of Community and Junior Colleges to implement its plans for a Community College Satellite Network to provide the technological line for the delivery of quality educational materials throughout the country. The development of ITFS facilities to provide the terrestrial segment for dissemination of these materials is vital if it is to be ultimately successful.

3. NIA, in previous proposals for expediting the development of "wireless cable" as an effective competitor for the traditional cable industry, supported the reallocation of the H channels from Private Radio to the MDS service in the Common Carrier Bureau. It has also supported the concept of co-location though it now appears that this idea needs some further clarification. On the other hand NIA has opposed reallocation of response channels, involuntary modification of facilities (except upon non-negotiable conditions to protect present and future ITFS development), and direct licensing of ITFS facilities to MMDS operators.

4. NIA believes that the development of a healthy and robust partnership with the wireless cable industry can only occur on a regulatory playing field that is level and balanced, protecting the traditional ITFS use of facilities while enhancing the growth of the wireless industry. In support of that, NIA has consistently urged the Commission to put all elements of the wireless industry (MDS, MMDS, ITFS) under one regulatory roof, and further urged that the "roof" be the Mass Media Bureau. Whatever the originally initial intended purposes of the MDS facilities, the totally overwhelming use in 1992 is not for Common Carrier purposes but rather for private carrier or mass media purposes.

MDS PROCESSING

5. As noted briefly above NIA supports the third option (paragraph 6 of the NPRM) which would relocate MDS processing and regulation to the Mass Media Bureau. It would be unthinkable to have part of the FM (or AM or TV, or telephone) service regulated partly by one Bureau and partly by another. Whatever the original purposes of each of the parts, it is time to recognize that all of the parts -- Channels 1, 2, 2A, H group, ITFS, MMDS -- are now joined together as part of a single "wireless" cable service. Aside from Channels 1, 2, and 2A, the remaining channels are physically and technically intertwined, with numerous channel adjacencies among the parts and total involvement of all channels if one takes into account excess capacity leasing of ITFS channels. Two regulatory and processing schemes, two decision making

processes and two bureau chiefs approving facilities that directly impact each other seems a foolhardy way to proceed.

6. Twenty (of 33) of the channels that make up the new service are already processed and granted^{1/} by the Mass Media Bureau. Eight others (the E and F groups) are applied for exclusively for mass media - type video services. The handful of existing users of the remaining channels can seek grandfathered protection under Common Carrier regulation, while all new applications for private carrier or mass media uses should be processed with the other channels.

7. This is not to say that the transfer of all processing to the Mass Media Bureau should happen without a realistic reassignment of personnel from the relinquishing bureaus to provide the necessary staff to process the new work load and, along with the people should come the techniques to handle the applications. For instance while it would not seem to make sense to ship all applications to Gettysburg^{2/} for initial screening and data base entry, it would make sense to develop that same process where it is needed. The system needs to be created that minimizes the

^{1/} With two regrettable exceptions when the Common Carrier Bureau, without so much as informing, nevermind consulting with, Mass Media, granted licenses to use ITFS facilities to Nevada Bell to provide rural telephone service.

^{2/} The under-utilization of the present processing staff in Gettysburg should not lead to the conclusion to shift more work there, but rather to reallocate some of the staff to the overworked bureaus at other locations.

handling and movement of each application. The fact that some applications (ITFS) are filed in Washington (no fee) and others are filed in Pittsburgh (fee) should not lead to the conclusion that movement of all of them to Gettysburg is desirable.

8. Two other suggestions on the speed up and uniformity of handling all applications. First, eliminate the necessity of providing useless or marginally useful information that is not productive in the grant process. Replace showings, demonstrations and/or analyses with certificates where possible. This would apply to ITFS as well as MMDS and other applications. For instance, what is the real need, if any, to require an educator to provide a program schedule? What, if any, is the correlation between the titles shown on the program schedule and those that are actually transmitted one to three years later when the system is built? What is the regulatory significance of the difference? Put another way, who cares? An applicant already certifies that it will operate the system in compliance with the Rules and Regulations of the Commission.

9. As a second suggestion, in this advanced age of scanning devices one would hope that the "tenderability" information could be formatted in a way that the initial screening of applications could be by machine.

INTERFERENCE PROTECTION

10. NIA feels there is great danger in putting expedition of processing ahead of substantive need for real protection from interference. Mileage standards are quick and easy. Round circles either intersect or they don't. But the real world does not exist with communities all on a grid of 80 kilometers separation in each direction. The "flat earth" assumption that underlies that proposal may exist in parts of the midwest but nowhere else. Furthermore, because line-of-sight connection between transmitter and receiver is essential, the slightest natural or unnatural terrain barrier could render any proposed standard totally unworkable. On the other hand, school districts are not often round circles either. Some receiving schools may be close by and others far from the transmit point. They want protection for each receiving school no matter where its located.

11. There is a natural tension between the MMDS operator/excess capacity lessee and the school districts that are the ITFS license holders in any fully-organized community. The MMDS operator wants a central location designed to reach the maximum number of residences in the community. The school district in the central part of the city may, be well satisfied with that site for its ITFS facility. However, other school districts serving suburban communities whose schools can often be far from the MMDS site, may not be at all well served from such a site. The result may be that a school is well beyond the predicted area of

interference protection. The inability to protect that site may force the ITFS operator to choose between much needed financial support and service to a constituent school. NIA strong favors an actual interference standard for registered sites.

12. The converse is also true. Because ITFS is so site specific, it may be possible, on an actual interference standard, to have more than one system using the same channels in generally the same area. A predicted interference standard would preclude such multiple uses.

13. Footnote 29 of the NPRM contains an enormously dangerous proposal that, after notify all ITFS co-channel or adjacent channel operators within a specified range of a proposed MDS operation at least 14 days prior to commencement of operation and notifying those ITFS operators of its exact operating schedule, the MDS license would become "unconditioned" if the ITFS operator failed to notify the MDS operator of any interference in a thirty day period. This is totally unrealistic. First, the "notice" to a University or school district license is often quite properly addressed to the governing board. The likelihood is slim that a secretary at that location during the school year would know what to do with the notice and be able to get it routed to the correct office within that time limit. The likelihood during vacation periods diminishes greatly.

14. Secondly, the continuing correctness of addresses drawn from decade old applications have only a slim chance of still being accurate. Third, many ITFS operations simply do not operate during the summer months at all. The plant is shut down and the staff either wise occupied or on vocation. In fact, at many, if not most school-based licensees, there is a 90-100 days annual down time during the summer.

15. Fourth, even if notice is reasonably received, very few ITFS operations have a person on staff capable of the kind of analysis necessary to measure and evaluate interference. Fifth, very few ITFS operations have sufficient staff to allow them to drop all other work and go to each receive site, conduct the analysis and write up the results in a 30 days period. Sixth, virtually no ITFS operations have sufficient budget resources to hire an outside consulting engineer to conduct such a study.

16. Finally, an interference study conducted in the growing season when the trees are fully leaved may be quite different from the same study in February, when the trees are bare. Other season weather factors (snow and fog) may also skew results.

17. Moreover, why should there be such a short review period? One could even ask why there should be a review period at all. Failure to act in a period as short as 30 days effectively becomes a permanent waiver of rights. The processing policy proposed by the Commission goes well beyond any practical necessity and permanently damages the present and future operations of ITFS.

18. As a footnote to this issue, but related to the processing issue discussed above, it is, under the present processing procedures whereby MDS applications are processed in the Common Carrier Bureau, an ITFS operator (who very infrequently has Washington legal or engineering support) would have virtually no way to know whether or if an MDS application for nearby facilities was filed at the FCC. Yet under the proposal in footnote 29, only receive sites registered at the time the MDS transmitter is licensed are to be given actual protection. What about sites in use but not registered or sites added and registered after licensing but prior to the commencement of MDS operations?

19. Read as a whole this proposal is punitive to ITFS interests and unworthy of support in its present form by any fair-minded party. NIA suggests that the obligation should be open-ended for all sites registered prior to commencement of MDS operation. A subsequent modification of the MDS facilities would open the protection to all sites registered prior to operation with the modified facility.

OTHER MATTERS

20. NIA supports the freeze on new MDS and MMDS applications in so far as it helps to remove some of the "gold rush" hysteria from applications for ITFS facilities motivated by entrepreneurs.

21. The creation of a data base for all applications for all

concept entirely incapable of being achieved without resolution of the interference protection standards.

22. Although not specifically raised in this docket, an issue related to interference protection that needs attention is the definition of co-location. With respect to broadcast stations, co-location is loosely defined as "in the area" or "antenna farm". With respect to line-of-sight technology, in addition to power, co-location almost of necessity means the same tower. However, there's one additional factor: same height or close to it. Facilities on the same tower with the identical ERP which are separated by more than 20 feet may have very differing capacities and create undesirable interference. NIA believes that a maximum vertical separation, which it proposes to be 20 feet, is necessary to the concept of co-location.

In conclusion, NIA supports the improvement in the processing of all applications in the wireless cable spectrum and believes this can best be accomplished by consolidation of the processing in the Mass Media Bureau. NIA opposes the odious provisions in footnote 29 severely limited protection rights now given to ITFS licensees.

Respectfully submitted

NATIONAL ITFS ASSOCIATION

By


Wayne Coy, Jr.

June 29, 1992